

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JOHN CHARLES McGRIGGS

PETITIONER

VS.

CIVIL ACTION NO. 5:08cv228 (DCB) (MTP)

RON KING

RESPONDENT

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING ACTION WITH PREJUDICE

This cause is before the Court on the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 12**), and on the petitioner John Charles McGriggs' motion for stay and abeyance (**docket entry 13**). Having carefully considered the report and recommendation, the petitioner's motion, and the respondent's response to the motion, the Court finds as follows:

McGriggs was convicted of rape in the Circuit Court of Warren County, Mississippi. On June 27, 2006, he was sentenced to serve a term of eighteen years in the custody of the Mississippi Department of Corrections. Petitioner appealed his conviction and sentence, and on April 1, 2008, the Mississippi Court of Appeals affirmed his conviction and sentence. Petitioner filed a motion for rehearing on April 29, 2008. On July 29, 2008, the Mississippi Court of Appeals denied the petitioner's motion for rehearing. On August 19, 2008, the mandate of the court was issued and filed. The petitioner had fourteen days to file a petition for writ of

certiorari with the Mississippi Supreme Court, which he failed to do. Thus, petitioner has not "give[n] the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 840-41, 844-45, 847-48 (1999) (holding that failure to raise claims in petition for leave to appeal to state's highest court (that had been raised before the intermediate appellate court) resulted in a procedural default of those claims).

The petitioner's failure to timely seek review of his claims in the state courts results in a procedural default of his federal habeas claims, and a bar to their review by this Court. In his thorough Report and Recommendation, Magistrate Judge Parker finds that the petitioner has shown neither the "cause and prejudice" exception, nor the "fundamental miscarriage of justice" exception to the procedural bar. In addition, the petitioner is not entitled to a stay and abeyance because he has not shown good cause for his failure to exhaust, and the time for filing a petition for writ of certiorari has already passed. The Court therefore adopts the findings of fact and conclusions of law of the report and recommendation. The petitioner's motion for stay and abeyance shall be denied, and this action dismissed with prejudice.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge Michael T. Parker (**docket entry 12**), is adopted by the Court in its entirety;

FURTHER ORDERED that the petitioner John Charles McGriggs' motion for stay and abeyance (**docket entry 13**) is DENIED;

FURTHER ORDERED that this action is dismissed with prejudice.

SO ORDERED AND ADJUDGED, this the 30th day of March, 2009.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE